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January 31, 2019

Ms. Brandi Jones
Senior Planner
City of Irwindale, Planning Division
5050 North Irwindale Avenue
Irwindale, CA 91706

RE: Comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the 5175 Vincent Avenue Project (SCH #2018121056)

Dear Ms. Jones:

As we discussed on the phone January 30, 2019, the California Attorney General's Office has reviewed the City of Irwindale's Notice of Intent to Adopt a Mitigated Negative Declaration (MND) and Initial Study for the 5175 Vincent Avenue Project (the Project). On Friday, January 18, 2019, the Attorney General's Office submitted a set of questions concerning the Project to the City. We have not yet received a response, and we understand that the City needs additional time to respond to the questions. Nonetheless, for the City's benefit as it considers how to proceed, we respectfully submit these comments regarding the City's compliance with the California Environmental Quality Act (CEQA).¹

While we commend the City's remediation of the former Manning Pit site, the MND and Initial Study for this large warehouse project fail to support the City's conclusion that the Project would not have significant impacts on the surrounding low-income community of color. One of the "basic purposes of CEQA [is] to [i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities."² The threshold for determining whether an environmental impact report (EIR) is required is a low one—an EIR is needed if substantial evidence supports a "fair argument" that a project may have a significant effect on the environment.³ Here, the City's air quality impact analysis fails to evaluate the

¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14–15.)

² CEQA Guidelines, § 15002(a)(1).

³ *The Pocket Protectors v. City of Sacramento* (2005) 124 Cal.App.4th 903, 928; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399–1400.

Project's cumulative impacts, as required by CEQA. Nor does it analyze all of the Project's reasonably foreseeable uses, including the use of the warehouse for refrigerated storage. It also fails to evaluate the Project's consistency with the regional air quality plan. In addition, contrary to the Initial Study's conclusion, the traffic noise data provides substantial evidence of a significant environmental impact, warranting additional study. We therefore urge the City to prepare an EIR to fully study, disclose, and mitigate the Project's significant environmental impacts.

I. THE PROJECT WOULD SITE A LARGE WAREHOUSE ON A RESIDENTIAL STREET IN A HIGHLY-POLLUTED LOW INCOME MINORITY COMMUNITY.

The Project consists of an approximately 545,735 square-foot high-cube warehouse, 199 standard parking stalls, 181 truck parking stalls, and utility and landscaping improvements.⁴ The Initial Study predicts that the Project would generate 580 truck trips and 2,128 passenger car trips daily.⁵ The Project site totals 26.05 acres across two vacant parcels.⁶ While the site is zoned M-2 for Heavy Manufacturing uses, 8.07 acres of the site are currently designated Residential in the City's General Plan, which the Project would re-designate Industrial/Business Park.⁷

The Project is located on Vincent Avenue at the boundary of southeastern Irwindale and Vincent, an unincorporated community in Los Angeles County.⁸ Vincent Avenue is a busy residential street with single-family homes across from the Project.⁹ Additional single-family homes are to the west, along with Irwindale Park, Irwindale City Hall, and a public library.¹⁰ Alice M. Ellington Elementary School is less than 1,000 feet to the east, and thirteen other schools are located within approximately 1.5 miles of the Project.¹¹ North of the site is a largely industrial area.¹² To the south sits the remainder of the former quarry area and more single-family homes.¹³

The surrounding community is already highly burdened by pollution. According to CalEnviroScreen 3.0, CalEPA's screening tool that ranks each census tract in the state for pollution and socioeconomic vulnerability, the Project's census tract ranks worse than 90-95 percent of the rest of the state overall.¹⁴ The census tract is in the 100th percentile for pollution

⁴ Initial Study at p. 4.

⁵ *Id.* at p. 95 Table 18.

⁶ *Id.* at p. 3.

⁷ *Id.* at p. 3-5.

⁸ *Id.* at p. 3.

⁹ *Id.* at p. 11 Fig. 3.

¹⁰ *Id.* at p. 9 Fig. 2.

¹¹ *Ibid.*

¹² *Id.* at p. 11 Fig. 3.

¹³ *Id.* at p. 17 Fig. 6.

¹⁴ CalEnviroScreen 3.0, available at <https://oehha.ca.gov/calenviroscreen> (as of January 17, 2019). CalEnviroScreen is a tool created by the Office of Environmental Health Hazard

burden, meaning it is more polluted than almost all other census tracts in the entire state. The surrounding community bears the impact of multiple sources of pollution and is more polluted than average on every pollution indicator measured by CalEnviroScreen. The Project area has more solid waste sites, groundwater threats, toxic releases, hazardous waste sites, and traffic than 85 percent of the State. Furthermore, the community, which is largely Hispanic, is especially vulnerable to the impacts of pollution. The community has very high unemployment rates, which is an indication that they may lack health insurance or access to medical care. Furthermore, the community surrounding the Project has a higher proportion of babies born with low birth-weights than 82 percent of the State, which makes those children more vulnerable to asthma and other health issues. The residents of neighboring Vincent are likewise majority Hispanic and bear a relatively high pollution burden according to CalEnviroScreen.

II. THE CITY’S AIR QUALITY IMPACT ANALYSIS IS INSUFFICIENT.

A. The City Failed to Analyze Cumulative Air Quality Impacts.

“One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources.”¹⁵ Consequently, CEQA requires analysis of cumulative impacts.¹⁶ Despite inclusion of a cumulative air quality impact checklist question, however, the Initial Study provides no analysis of cumulative air quality impacts. Instead, it groups the cumulative impacts criterion with its analysis of the Project’s individual impacts and proceeds to evaluate only the Project’s incremental effects.¹⁷ Because the Initial Study finds that the Project in isolation would not exceed any emissions standard, it concludes that its air quality impacts—including, without saying so, its cumulative impacts—would be less than significant.¹⁸

But an Initial Study must “[e]xplain[] the reasons for determining that potentially significant effects would not be significant.”¹⁹ A proper cumulative impacts analysis involves considering the incremental impact of the Project in combination with related impacts of other

Assessment that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. Office of Environmental Health Hazard Assessment, CalEnviroScreen 3.0 Report (January 2017), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

¹⁵ *Kings Cty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.

¹⁶ CEQA Guidelines, Appendix G, §§ 15130, 15355.

¹⁷ Initial Study at pp. 30-34.

¹⁸ *Id.* at pp. 33-34.

¹⁹ *Id.*, § 15063, subd. (c)(3)(C).

past, present, and reasonably foreseeable probable future projects.²⁰ That inquiry is distinct from considering the Project’s impacts in isolation.²¹

Analysis of the Project’s cumulative air quality impacts is especially crucial here because the Project is located in a community that already suffers from some of the worst pollution in the State. While the Project’s air quality impacts may not be significant in isolation, they become more concerning when combined with the pollution produced by nearby quarries, factories, oil recycling facilities, and warehouses. Moreover, sensitive receptors surround the Project site on three sides. Despite California Air Resources Board guidelines suggesting that distribution warehouses should be at least 1,000 feet away from sensitive land uses to avoid health impacts, single-family homes and an elementary school are within 1,000 feet to the west, east, and south.²² The Initial Study does not consider whether the Project’s impacts in combination with other sources of air pollution will have cumulative impacts on the nearby sensitive receptors could be significant. The City should prepare an EIR to investigate this question.

B. The City Must Consider the Air Quality Impacts of the Project’s Various Allowed Uses.

Under CEQA, the City must analyze all reasonably foreseeable Project impacts.²³ That includes the Project’s various allowed uses. The project description states that “[h]igh-cube warehouses are generally grouped into five types: fulfillment center, parcel hub, cold storage facility, transload facility, and short-term storage facility,” and that “[t]he exact use of the proposed high-cube warehouse would fall into one of these five types.”²⁴

Different types of warehouses have different environmental impacts. For example, because refrigeration functions produce substantially more air pollution and greenhouse gas emissions, cold storage warehouses have greater air quality impacts than other types of warehouses. As the California Air Resources Board explains,

Transport Refrigeration Units (TRUs) are refrigeration systems powered by diesel internal combustion engines designed to refrigerate or heat perishable products that are transported in various containers, including semi-trailers, truck vans, shipping containers, and rail cars. Although TRU engines are relatively small, ranging from

²⁰ *Id.*, § 15355, subd. (b); *Communities for a Better Env’t v. California Res. Agency* (2002) 103 Cal.App.4th 98, 118 (“[T]he guiding criterion on the subject of cumulative impact is whether any additional effect caused by the proposed project should be considered significant given the existing cumulative effect.”).

²¹ *Kings Cty. Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d 692, 719-21 (holding that relatively small air quality impacts from a project do not eliminate the need to consider the project’s combined impacts with other development).

²² California Air Resources Board, Air Quality and Land Use Handbook: A Community Health Perspective (April 2005), at p. 4.

²³ *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.

²⁴ Initial Study at p. 4.

9 to 36 horsepower, significant numbers of these engines congregate at distribution centers, truck stops, and other facilities, resulting in the potential for health risks to those that live and work nearby.²⁵

In its air quality analysis, the City appears to have evaluated only the impacts of an unrefrigerated warehouse, even though the Project could include refrigeration.²⁶ The City must analyze the impacts of all reasonably foreseeable Project uses, including cold storage.

C. The City Did Not Justify its Conclusion that the Project is Consistent with the Regional Air Quality Plan.

Furthermore, the Initial Study failed to explain its finding that the Project would not conflict with the applicable air quality plan. The South Coast Air Basin's air quality management plan surveys the region's forecasted development and uses those projections to create a program to bring the region into compliance with federal air quality standards. Its projections are based on current land use plans, including zoning and local general plans. While much of the Project site is currently designated by the Irwindale General Plan for industrial uses, the Project involves re-designating about one-third of the site from residential to industrial. The Project's industrial land use on this parcel would likely generate greater emissions than development based on its prior residential designation, so the Project could conflict with the air quality management plan's projections. After acknowledging the change in land use designation, the Initial Study fails to analyze this potential impact. At minimum, the City must explain why re-designating 8.07 acres of the site from residential to industrial would not conflict with the air district's air quality plan.²⁷

III. THE CITY'S TRAFFIC NOISE IMPACT ANALYSIS DEMONSTRATES THAT THE PROJECT MAY HAVE A SIGNIFICANT ENVIRONMENTAL IMPACT.

The Project's traffic noise impacts also warrant preparation of an EIR. Vincent Avenue, where the Project's entrance points would be located, is a residential street lined with single-family homes.²⁸ The Project would bring 580 daily truck trips and 2,128 daily passenger car trips to this street, subjecting the neighboring families to the attendant noise of this traffic 24 hours a day, seven days a week.²⁹

Data from the Initial Study show that the Project may have significant traffic noise impacts. The City appears to use a 55-70 decibel significance threshold for noise impacts, which

²⁵ California Air Resources Board webpage entitled Transport Refrigeration Unit (TRU or Reefer) ACTM, available at <https://www.arb.ca.gov/diesel/tru/tru.htm>.

²⁶ Initial Study at Appendix A.

²⁷ CEQA Guidelines, § 15063, subd. (c)(3)(C) (providing that environmental documents must “[e]xplain[] the reasons for determining that potentially significant effects would not be significant”).

²⁸ Initial Study at p. 11 Fig. 3.

²⁹ *Id.* at p. 95 Table 18.

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is a state standard for “conditionally acceptable” noise.³⁰ The Initial Study predicts traffic noise with the Project at two nearby points to be 72 decibels and 74.4 decibels, respectively.³¹ Both of these measurements are well above the 70 decibel threshold used by the City, especially as the decibel scale is logarithmic (meaning a 10 decibel increase is a doubling of noise).

Despite this data, the Initial Study finds that the Project “would result in a decibel level of approximately 70 dBA at the nearest residential receptors along Vincent.”³² It then incorrectly concludes that “[t]hese scenarios fall *under* the conditionally acceptable standard established by the State,” such that the impacts are less than significant.³³ However, at minimum, the analysis showing traffic noise would be above 70 decibels is substantial evidence of a fair argument that the Project would cause a significant impact. An EIR to fully study and mitigate the Project’s significant traffic noise impacts is thus required.³⁴

IV. CONCLUSION

CEQA promotes public health and thoughtful governance by requiring evaluation, public disclosure, and mitigation of a project’s significant environmental impacts before project approval. While we commend the City’s efforts to remediate the Project site, an MND is not appropriate for this large warehouse Project. The City should prepare an EIR to study all potentially significant Project impacts, including cumulative air quality impacts, the impacts of all reasonably foreseeable Project uses, the Project’s consistency with the regional air quality plan, and traffic noise impacts. In evaluating the Project’s impacts, the City should consider the surrounding community’s already-high pollution burden and vulnerability to the resulting health effects. I am available to provide assistance to the City as it further studies the impacts of the Project, including providing example mitigation measures from other similar projects. Please do not hesitate to contact me if you have any questions or would like to discuss.

Sincerely,



ROBERT SWANSON
Deputy Attorney General

For XAVIER BECERRA
Attorney General

³⁰ *Id.* at p. 75.

³¹ *Id.* at p. 77 Table 11.

³² *Id.* at p. 78.

³³ *Ibid.* (emphasis added).

³⁴ *Gentry v. City of Murrieta, supra*, 36 Cal.App.4th 1359, 1399–1400.